

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**(Oakland, California)**

**STAFFPRO, INC.**

**Employer <sup>1</sup>**

**and**

**Case 32-RC-4550**

**COLISEUM SECURITY UNION**

**Petitioner**

**and**

**SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 1877, AFL-CIO**

**Intervenor**

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer, a California corporation, with principal offices located in Los Alamitos, California and a branch

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<sup>1</sup> The name of the Employer appears as amended at the hearing

<sup>2</sup> Briefs filed by the Employer and Service Employees International Union, Local 1877, AFL-CIO, have been duly considered. No other briefs were filed.

facility located in Oakland, California, its only facility involved herein, is engaged in providing guest services at the Oakland Alameda County Coliseum. During the past twelve months the Employer provided more than \$50,000 worth of services to an entity which meets one of the Board's direct jurisdictional standards. Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. Accordingly, the assertion of jurisdiction is appropriate herein.

3. The parties stipulated and I find that Service Employees International Union, Local 1877, AFL-CIO, (SEIU, Local 1877) is a labor organization within the meaning of Section 2(5) of the Act. SEIU, Local 1877 was permitted to intervene in this proceeding on the basis of its expired collective bargaining agreement with the Employer.<sup>3</sup> Additionally SEIU, Local 1877, the Intervenor herein, contends that Petitioner is not a labor organization within the meaning of Section 2(5) of the Act because it has no members. However, Petitioner obtained authorization cards from employees and filed the petition in the instant case as well as in Cases 32-RC-4403 and 4407 where I previously found that it was a labor organization within the meaning of the Act. In these circumstances and noting that Petitioner is in the process of being formed and seeks to represent employees for the purposes of collective bargaining I find, contrary to the Intervenor, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. As noted above the Employer provides guest services at the Oakland Coliseum during the Oakland Athletics' games. As clarified at the hearing, Petitioner seeks to represent a unit of all full-time and regular part-time security guards employed by the Employer at the Oakland Alameda County Coliseum solely during the baseball season<sup>4</sup>, excluding all other employees, office clerical employees and supervisors as defined in the Act. Specifically, Petitioner seeks to represent employees of the Employer who are employed as guards within the meaning of Section 9(b)(3) of the Act and contends that the petitioned for employees who are referred to herein as guest services/special services employees are statutory guards<sup>5</sup>. Contrary to Petitioner, the Intervenor and the

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<sup>3</sup> The Petitioner objected to the granting of intervention status to SEIU, Local 1877 because the collective bargaining agreement expired on October 31, 1998. The fact that the contract is no longer current is irrelevant. See Casehandling Manual Sec. 11194.1 that allows intervention based on recently expired collective bargaining agreements.

<sup>4</sup> The baseball season lasts generally from March to the end of September unless there is post-season play. Thus the employees at issue herein are seasonal employees.

<sup>5</sup> The record does not specifically disclose the particular classification that the Petitioner contends performs the duties of statutory guards. The Employer maintains 4 classifications of employees: guest services; guest services/ ticket seller; guest services/special services; and guest services/supervisor. According to the petition, Petitioner initially sought to represent approximately 30 employees. Employer's exhibit 2 shows the total number of employees who worked during the 1998 baseball season. However, none of the employee classifications have a total number of 30 employees or approximate that number. More significantly, as discussed

Employer contend that the petition should be dismissed as the guest services/special services employees are not guards within the meaning of Section 9(b)(3) of the Act and that in the event they are found to be guards, the petition is not supported by the requisite number of authorization cards. Additionally the Employer asserts that the petition should be dismissed because it is premature, as the Employer has not hired any employees for the upcoming 1999 baseball season.

As background it should be noted that the Employer has been providing guest services during the Oakland Athletics' games since 1997. Prior to that this service was provided by the Coliseum with whom the Intervenor had a collective bargaining relationship covering two separate bargaining units, one limited to employees who did security work, the other included janitors and guest services employees. Subsequently when the Employer assumed the guest services operation and it negotiated the recently expired collective bargaining agreement with the Intervenor, the Employer took the position that it wanted a "softer look" and prohibited the use of weapons by any of its employees.<sup>6</sup>

All guest services/special services employees are initially hired into the guest services position. If an employee has a guard card<sup>7</sup> or is willing to get one<sup>8</sup> and that employee appears to have an ability to work effectively with the public, he or she may subsequently be asked to transfer to the special services position. According to Ronald Mondragon, Director of Human Services for the Employer, special services employees are mostly used for crowd control whereas guest services employees mainly work as ushers and ticket takers. When working crowd control a special services employee is required to be sensitive to the surrounding events and use proper protocol; specifically, not touching any customers or patrons but rather seeking assistance from the Oakland police department should the need arise. In this regard, the record shows that the Oakland police department maintains a presence in the security office although the police do not patrol the stands on a regular basis. On those occasions when a patron is behaving in an unruly manner a guest services/special services employee may remove that patron from the stands and escort him/her to the security office where the police officer on duty will take over the situation. Thus,

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more fully below, the only classification of employees who arguably perform guard-type duties are the guest services/special services employees.

<sup>6</sup> Previously when guest services was provided by the Coliseum, the employees carried guns and batons.

<sup>7</sup> A guard card is required in the state of California to work as a security guard. In order to qualify for a guard card an applicant must be at least 21 years of age, provide fingerprints and a photograph, be free of felony convictions and pass a background check conducted by a state agency. Applicants must take a class that lasts approximately 3 hours and then pass a test. The record does not reveal what is covered in the class or the test.

<sup>8</sup> All special services employees are required to have guard cards.

the police officer and not the guest services/special services employee will decide whether the individual will be arrested or ejected from the facility.

As shown by the job title “special services/guest services”, special services employees are not permanently assigned to that position, rather an individual in this classification will regularly interchange between the positions of guest services and special services. Due to the additional requirement of a guard card and their crowd control responsibilities, special services/guest services employees are paid an additional \$1 per hour.

The initial training lasts 3 1/2 or 4 hours and it is the same for all employees. No employee receives any physical training and there are no age limits.<sup>9</sup> Regarding their job duties, all employees control access to the facility in the sense that they can deny entry to anyone that insists on bringing in alcoholic beverages or cans. All employees can check suspicious packages and can ask individuals to leave the facility for unruly behavior including drunkenness and fighting. The evidence further revealed that the employees at issue herein do not carry any type of weapon, are not authorized to make arrests nor physically restrain anyone and are not trained by the Employer in any type of security function. A written job description for the special services/guest services position shows that the basic responsibilities are to greet and assist guests; maintain a safe environment for guests; observe, assist, and document all incidents; identify and appropriately deal with intoxicated persons; prevent theft and damage; check tickets, direct guests to assigned seats or other facility locations; assist guests to find lost articles and children; and assist disabled guests.

Taina Machado who worked for the Employer during the 1998 baseball season testified that she regularly carried handcuffs and described two occasions when they were used. During the first occasion she responded to a radio call from her supervisor, gave him the handcuffs, and he used them to restrain an individual. On the second occasion there was a brawl, which Machado characterized as a “mess”. She and other special services employees removed individuals who were fighting. Machado used the handcuffs during that incident but she does not know if the other guest services/special services employees who responded to the call used handcuffs on any of the patrons at that time<sup>10</sup>. Although according to the Employer’s written policy employees must receive written authorization from the Board of Directors before they can use handcuffs, according to Machado she received oral permission to wear them from Francisco

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<sup>9</sup> Retired persons have worked as special services.

<sup>10</sup> Machado additionally testified that during the 1998 baseball season she had seen two other guest services/special services employees carry handcuffs. However, there is no evidence that these or any other employees beside Machado have used handcuffs.

Oropeza, the Employer's game services manager.<sup>11</sup> It is undisputed that the Employer does not require the employees to use handcuffs, that the Employer does not provide training in the use of handcuffs, and that if any employee takes this training, its cost will not be reimbursed by the Employer.

All guest services/special services employees wear a uniform that consists of khaki pants and black shoes; however, employees wear different color shirts and jackets depending on whether they are working guest services or special services. Thus, guest services employees use green jackets and white shirts while special services employees use black jackets and shirts. It appears though that only special services employees display the word "security" across the back of their jackets and on their polo shirts. Thus none of the employees use traditional guard uniforms or badges.

None of the employees is responsible for patrolling or securing the premises nor specifically charged with protecting the facility during a strike nor is any employee responsible for reporting violations of company rules by other employees. Although there are watchmen on the premises who patrol the facility on a 24-hour basis, these watchmen are not employed by the Employer.

As previously noted, the employees whose status as guards is at issue herein, are seasonal employees as they are only employed during the baseball season. The Employer's list of employees who worked during the 1998 baseball season shows 370 names. The majority of these worked the guest services and guest services/ticket taker positions; approximately 80 were guest services/special services employees. Machado, who only worked weekday night games, testified that on the evenings she worked there would be approximately 50-75 guest services/special services employees working also.

Section 9(b)(3) of the Act defines a guard as "any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." Based on the above and the record as a whole I find that the guest services/special services employees are not guards within the meaning of the Act and that, in view of the Petitioner's lack of interest in representing employees in a larger or non-guard unit, dismissal of the petition is warranted. In this regard I note that although these employees can inspect packages being carried by patrons in order to keep out cans and alcoholic beverages, they cannot detain anyone. Likewise, during incidents of unruly behavior such as drunkenness and fights, they have no authority to arrest; rather in such circumstances they escort the individuals to the security office where officers of the Oakland police department decide whether to carry out an arrest or eject the individuals. The guest services/special services employees do not use traditional guard uniforms,

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<sup>11</sup> Mondragon testified that he was not aware that Oropeza had given Machado oral permission to carry handcuffs. There is no evidence that other employees have received permission to carry handcuffs from anyone.

badges, or weapons of any kind. Although Machado testified that she wore handcuffs during the 1998 baseball season, this apparently is not a widespread practice among the employees as according to her only two other employees beside her carried handcuffs. Further it is clear that, in accord with the Employer's written policy, Machado did not receive written authorization from the Board of Directors to use handcuffs, and Mondragon was unaware that she had done so. Additionally Machado testified that that during the 1998 baseball season there were two incidents where handcuffs were used on a patron. During the first incident, in response to his request Machado provided the handcuffs to a supervisor who then handcuffed the individual. During the second incident, a brawl, she actually handcuffed a person. However, I view this as an isolated incident particularly in view of the undisputed evidence that handcuffs are not necessary to perform the duties of a guest services/special services employee. Thus, although these employees perform crowd control, there is no evidence in the record that they perform significant guard duties or functions when thus responding; rather, their crowd control duties are incidental to their primary duty of providing guest services which includes maintaining a safe environment for guests. Additionally these employees do not patrol the Employer's premises or present themselves as guards. See Madison Square Garden, 325 NLRB No. 180 (1998); Wolverine Dispatch, Inc., 321 NLRB 796 (1996). Accordingly,

IT IS HEREBY ORDERED that the petition in this matter be, and it hereby is, dismissed<sup>12</sup>.

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<sup>12</sup> In view of my decision to dismiss the petition on other grounds, it is unnecessary to address the Employer's argument that the petition should be dismissed because it is premature due to the seasonal nature of the Employer's operations.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by March 19, 1999.

Dated at Oakland, California this 5th day of March, 1999.

/s/ Veronica I. Clements

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